the Judges. There appears some reason to think that, as to one of the existing appointments, and another, the appointee of which has since died, these had been made, though in anticipation of vacancies about immediately to take place, yet, in fact, before the vacancies did occur; and as to two other appointments—one of which is still existing—the appointments had been made before the Queen's assent had been given to the Bills providing the salaries, though after the Bills had passed both Houses and been reserved, and in one of which Bills was a clause giving a retrospective effect to it. It was contended that the Executive action could be used as aiding the interpretation. Some authorities were cited in which long usage universally acquiesced in had been allowed to control the language of Acts of Parliament. These cases have no application to the present. Indeed, with regard to the appointment of Mr. Justice Williams and Mr. Justice Gillies, the facts are not sufficiently before the Court to enable it to know what the Executive action was. In none of the cases does it appear whether or not any consideration was given to the present question.

There is, on the other hand, in the instance of the appointment of Mr. Justice Gresson—the first appointment made after the Judges Act of 1858—a tolerably clear indication of a reading of that Act adverse to the construction contended for in support of the validity of the appointment now in question.

It remains only to notice one matter that was mentioned during the argument. That is, that if either of the existing appointments was invalid at the time of appointment, the enjoyment of a salary since would not make them valid; and so, that, if these appointments were invalid in the inception, they would have remained so, and consequently there would have been a vacancy in law, though not in fact, when Mr. Edwards was appointed. The learned counsel who argued for the defendant not only did not rely on this contention, but repudiated it as untenable. It is as well, however, to notice that, whatever invalidity there may have been in any of the appointments existing at the time of the passing of "The Supreme Court Act, 1882," there were persons who were ostensibly holders of the offices, and were at that time acting as Judges. Those persons are referred to in the concluding part of the 5th section of that Act, and are there declared to be Judges as if appointed under the Act itself. There can, I think, be no doubt that it is the persons, and not their appointments, that are referred to. The matter was not deemed worthy of investigation, but it seemed that there were other matters which might be relied upon as giving validity to the appointment if such validity was brought into question, such as commissions, under the Seal of the Colony and in the name of the Queen, addressed to the holders of these offices, and speaking of them as Judges of the Court. It was not questioned, and was, in my opinion, beyond question, that Mr. Justice Richmond and Mr. Justice Williams were in fact and in law Judges of the Supreme Court at the time of Mr. Edwards's appointment.

As I think there was no authority in law to make the appointment, the judgment of this Court ought to be for cancelling the letters patent; but, the opinion of the majority of the Court being otherwise, the judgment will, of course, be for the defendant.

JUDGMENT OF RICHMOND, J.

In this case the information avers that the salary of the defendant as a Judge of the Supreme Court was not, prior to his appointment, ascertained and established; that no salary has yet been ascertained or established for him; and that Parliament has refused to vote any salary for him as a Judge. As a conclusion of law it is asserted that the patent issued to the defendant is void. The defendant joins issue on the averments of fact. Much time was occupied in discussing whether the salary promised by the late Administration could be considered to have been ascertained and established—a question which, as all the evidence is documentary, and the documents are admitted, becomes purely one of law. If the cause turned upon this issue I should hold that judgment must go for the Crown; for I am unable to see how a salary merely promised by a Minister, without the authority of the Legislature, express or implied, and without legal provision for its payment, can possibly be in any sense ascertained and established. To say so even sounds like irony.

I pass on, therefore, to the ulterior question of the validity of the patent. The position actually taken in argument on the part of the informant is founded solely on the averment that no salary had been prior to the appointment ascertained and established. Sir Robert Stout contends, and, as I think, is bound to contend, that a grant next session to meet the salary of Mr. Edwards would come too late to validate his commission. The legal question at issue therefore is, whether the non-existence of any provision for the salary of a fifth Puisne Judge at the time when this commission was issued makes it invalid—in other words,